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September 14, 2016

VIA ECF AND ELECTRONIC MAIL

Honorable Stuart M. Bernstein (Bernstein.chambers@nysb.uscourts.gov)
United States Bankruptcy Court
Southern District of New York
One Bowling Green, Room 723
New York, New York 10004-1408

Re: Adv. Pro. No. 10-04717 (SMB) *Irving H. Picard v. Estate of William Diamond*
Adv. Pro. No. 10-04884 (SMB); *Irving H. Picard v. Steven Andelman*
Adv. Pro. No. 10-04916 (SMB); *Irving H. Picard v. Susan Andelman*
Adv. Pro. No. 10-05094 (SMB); *Irving H. Picard v. Carolyn Miller, et al.*

Dear Judge Bernstein:

We are counsel to Irving H. Picard, as trustee (“Trustee”) for the substantively consolidated SIPA liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* and the estate of Bernard L. Madoff. We write to request a conference with the Court, under Local Bankruptcy Rule 7007-1(b) and your Honor’s Chambers Rules, regarding discovery disputes in the above-referenced adversary proceedings. Despite several written conferrals, included as Exhibit A, and telephonic conferrals, Defendants have not complied with their discovery obligations.

The Trustee seeks permission to file a motion to compel Defendants to serve Initial Disclosures, respond to the Trustee’s discovery requests, and to produce documents. The Trustee also seeks to have Requests for Admission deemed admitted in accordance with Federal Rule of Civil Procedure 36(a)(3).

Defendants’ Initial Disclosures

Pursuant to the parties’ agreed upon Case Management Notices, attached as Exhibit B, Defendants’ Initial Disclosures were due on December 18, 2015 in Adv. Pro. Nos. 10-04884, *Steven Andelman* and 10-04717, *Diamond*, and on February 19, 2016, in Adv. Pro. No. 10-04916, *Susan Andelman*. On May 9, 2016 defense counsel agreed to tender the overdue Initial Disclosures in these adversary proceedings, but to date, has failed to do so.

Requests for Production

The Trustee served requests for production of documents as follows:

- Adv. Pro. No. 10-04717, *Diamond* - served on June 27, 2016; responses due August 1, 2016.
- Adv. Pro. Nos. 10-04916, *Susan Andelman* and 10-04884 *Steven Andelman*—served on July 5, 2016; responses due August 8, 2016.
- Adv. Pro. No. 10-05094, *Miller* – served on July 11, 2016; responses due August 15, 2016.

See Exhibit C. Despite the Trustee's repeated communications to defense counsel and Defendants' assurances that responses were forthcoming, Defendants have failed to serve written responses or produce responsive documents. The Trustee respectfully requests an order compelling the production of documents pursuant to Federal Rule of Civil Procedure 37(a)(3)(B)(iv).

Requests for Admission

The Trustee served requests for admission as follows:

- Adv. Pro. No. 10-04717, *Diamond* – served on June 27, 2016; responses due August 1, 2016.
- Adv. Pro. Nos. 10-04916, *Susan Andelman* and 10-04884 *Steven Andelman*—served on July 5, 2016; responses due August 8, 2016.

See Exhibit D. Defendants have not responded. Federal Rule of Civil Procedure 36(a)(3) provides that “[a] matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection[.]”

The Trustee seeks the Court's permission to file a motion (1) compelling the *Andelman* and *Diamond* Defendants to serve their Initial Disclosures, (2) compelling all Defendants to produce documents responsive to the Trustee's discovery requests, and (3) confirming that the Trustee's Requests for Admission in *Diamond* and the two *Andelman* adversary proceedings are deemed admitted. Based on the foregoing, and under Local Bankruptcy Rule 7007-1(b), the Court's intervention is necessary to resolve this dispute. The Trustee therefore, requests a conference with the Court.

Respectfully submitted,

/s/ Edward J. Jacobs
Enclosures

cc: David B. Bernfeld (davidbernfeld@bernfeld-dematteo.com)
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